IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R. No.6571 of 2005
Date of Decision:03.08.2007

Spice Communications Pvt. Ltd

.....Petitioner

Vs.

Lakhwinder Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Pankaj Jain, Advocate for the petitioner.

Mr. Tajender Joshi, Advocate for respondents No.1 and 2.

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By way of present petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the order passed by learned Civil Judge, Junior Division, Ludhiana dated 28.10.2005 vide which the application filed by the petitioner under Section 10 CPC for stay of suit has been dismissed.

It is pleaded that the petitioner is a licensee of the Government of India whereby the license has been granted to it under Indian Telegraph Act, 1885 for Punjab Circle. As per the conditions of licence, the petitioner is entitled to instal towers. In the process, the petitioner decided to instal a tower in Ludhiana at 4/100 Block-J BRS Nagar, Ludhiana, a dwelling unit owned by Shri Kulbhushan Sharma. The site in question was taken by the petitioner on lease. It is further submitted that after getting the permission from the authorities, the petitioner started work for installation of the tower. Respondents No.1 and 2 along with two other persons filed suit for permanent injunction against the owner of the building from whom the petitioner had taken the premises on lease, restraining him from installing tower on his building. Application under Order 39 Rules 1 and 2 of CPC for interim stay was also filed. The interim injunction prayed for by the respondents No.1 and 2 was declined by the trial Court vide order dated 22.8.2005. Thereafter, respondents No.1 and 2 filed another suit

impleading, the petitioner, Municipal Corporation, Ludhiana and Ludhiana Improvement Trust, Ludhiana as the respondents praying for grant of permanent injunction against the present petitioner, for installing the tower and further for restraining the respondents No.3 and 4 in the present petition from giving any permission for installation of the tower. After receipt of notice of the subsequent suit, the petitioner moved an application under Section 10 CPC for stay of the subsequent suit. The application was contested by respondents No.1 and 2 and vide impugned order dated 28.10.2005, prayer made by the petitioner was declined and this order is impugned in the present petition.

I have heard Shri Pankaj Jain, learned counsel for the petitioner and Shri Tajender Joshi, learned counsel for respondents No.1 and 2 and with their assistance have gone through the impugned order and other documents on record.

Primary contention raised by learned counsel for the petitioner is that in the earlier suit filed by respondents No.1 and 2 along with two other persons, the relief claimed was that the respondent, who was the owner of the building, should be restrained from installing any tower on his building as the same was not good for the residents of the locality as well as neighbourors. Once the Court declined to grant interim relief in the earlier suit filed by respondents No.1 and 2 along with two other plaintiffs, the respondents No.1 and 2 filed the subsequent suit impleading the petitioner, the Municipal Corporation, Ludhiana and the Improvement Trust, Ludhiana as party respondents. However, the relief claimed was that the tower should not be installed. Learned counsel for the petitioner further states that the subsequent suit filed by respondents No.1 and 2 is clearly hit by the doctrine of res subjudice and was required to be stayed. He referred to and relied upon judgments in **M/s Sehgal Knitwears v. M/s Shreshth International and another,** 2001(1) PLJ 594 and **Arun General Industries Ltd. v. Rishabh Manufacturers Private Ltd. and others,** AIR 1972 Calcutta 128.

On the other hand, learned counsel appearing for respondents No.1 and 2 submitted that two suits filed by the respondents No.1 and 2 are entirely different as in first suit, the relief was claimed against the owner of the property restraining him from raising the tower in his premises without permission from concerned government authorities. The application for

interim relief filed by respondents No.1 and 2 was rejected by the Court in first suit on the ground that the defendant therein had in fact deposited the money with the Municipal Corporation and thereafter started installing the tower because the defendant therein was owner of the property. It was thereafter that only respondents No.1 and 2 out of the four plaintiffs in the first suit filed, approached the Court again by filing a suit for permanent injunction restraining the petitioner from installing the tower and also restraining the respondents No.3 and 4 herein from giving any permission to the petitioner for installing the tower as the same would be a safety health hazard for the residents of the area. According to the learned counsel, relief claimed in both the suits is quite different and accordingly the learned trial Court had rightly dismissed the application of the petitioner under Section 10 of the CPC for stay of suit.

In **Sehgal's case (supra)**, this Court while considering the applicability of Section 10 CPC in the facts and circumstances of that case held therein that bar imposed by Section 10 CPC will be applicable only if in both suits matter in issue is directly and substantially same, the parties are also the same and the relief claimed in the subsequent suit will impinge upon the relief claimed in the earlier suit and vice versa. Order passed by the trial Court therein for stay of suit was upheld. In **Arun General Industries' case(supra)**, the Calcutta High Court held that the words `same parties' mean the parties between whom the matter substantially in issue has arisen and has to be decided. Complete identity of either the subject- matter or the parties is not required.

The issue regarding interpretation of Section 10 has been gone into by Hon'ble the Supreme Court in the recent judgment reported as AIR 2005 SC 242 – **National Institute of Mental Health & Neuro Sciences v. C. Parameshwara** wherein it is held as under:-

> "8. The object underlying section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of section 10

> suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respectof the same matterin issue. The fundamental test to attract section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is identical."

In **M/s Sohal Engineering Works, Bhandup, Bombay v. Rustam Jehangir Vakil Mills Co. Ltd., Ahmedabad,** AIR 1981 Gujarat 110, it was held that Section 10 would apply only if there is identity of the matter in issue in both the suits meaning thereby that the whole of the subject-matter in both the proceedings is identical and not merely one of the many issues which arise for determination in the two suits. The issues and subject-matter are required to be identical in every particular. To similar effect is the judgment of Calcutta High Court in **Adhish Chandra Sinha v. Hindustan Gas & Industries Ltd. And another,** AIR 1985 Calcutta 154.

If the principles as laid down in the above referred cases are applied to the facts and circumstances of the present case, in my opinion, the trial Court has not misdirected itself from the settled principles of law on the issue. Applying the above principles in the facts and circumstances of the case, it is found that the first suit is filed by four plaintiffs against the owner of the property seeking a restraint from erecting tower on the building whereas the subsequent suit is filed merely by two plaintiffs out of the four in the first suit and the defendants therein are altogether different. Even if it is assumed that the defendant in the first suit, i.e., owner of the

property and the defendant in the second suit, i.e., present petitioner are inter-connected for the reason that it is the present petitioner who was to erect the tower in the premises of the defendant in the first suit, still the additional relief being claimed in the second suit was against the Municipal Corporation, Ludhiana and Ludhiana Improvement Trust restraining them from granting any permission for installation of the tower which was not there in the earlier suit. The second suit involves different issues as compared to the first suit. It is not a case where the second suit is entirely identical to the first suit and all the findings recorded in the second suit would operate as res judicata in the first suit. Accordingly, I do not find any merit in the present petition and upheld the order dated 28.10.2005 passed by the Civil Judge, Junior Division, Ludhiana.

The present revision petition is dismissed.

August 03, 2007 **(RAJESH BINDAL)**
renu **JUDGE**